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09/586,943	06/02/2000	Perry R. DeYoung	OLI02 P-350	6561

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EXAMINER

DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 05/05/2004

23

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/586,943

Applicant(s)

DEYOUNG, PERRY R.

Examiner

Clark F. Dexter

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,10-13,23,24,27-30 and 63-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9,14-22,25,26 and 31-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The amendment filed January 22, 2004 has been entered.

#### *Election/Restrictions*

2. Applicant's election with traverse of Group I in the response filed January 22, 2004 (paper no. 22) is acknowledged. The traversal is on the various grounds, and is not found persuasive for the following reasons.

In the third paragraph on page 14 of the response, applicant apparently feels compelled to raise the issue of a species election. The Examiner is puzzled as to why this issue continues to be raised since no species election has ever been required. The Examiner speculates that applicant may be confused because claim 1 and the other applicable independent claims are not included in the restriction requirement. For clarification, it is emphasized that claim 1 as well as all of the other applicable independent claims are NOT genus or generic claims with respect to species. And, again, an election of species has NOT been required. Rather, claim 1 and all of the other applicable independent claims are linking claims with respect to the claimed subcombinations.

In the fourth paragraph on page 14 of the response, applicant apparently feels compelled to raise the issue of a combination-subcombination restriction. Again, the Examiner is puzzled as to why this issue continues to be raised since, up to this point, no combination-subcombination restriction requirement has been made. For

clarification, it is emphasized that claim 1 and all of the other applicable independent claims are NOT combination claims with respect to the dependent claims prior to applicant's most recent amendment, and claim 1 and all of the other applicable independent claims are NOT considered to set forth subcombinations of the invention for restriction purposes (primarily because there is no two-way distinctness with their dependent claims). Rather, claim 1 and all of the other applicable independent claims are linking claims with respect to the claimed subcombinations.

In the first paragraph on page 15 of the response, applicant argues that the components of the groups are not mutually exclusive of one another. Again, an election of species requirement has NOT been made. Therefore, a species analysis is moot.

In the second paragraph on page 15 of the response, applicant's arguments are not understood. Applicant is apparently suggesting that the subject matter of claim 2 (a delay device) and the subject matter of claim 7 (a knife assembly) are not disclosed as useable together in a single combination. However, a brief review of the drawings and the specification clearly shows applicant's position to be inaccurate. Specifically, in the combination of elements/components/features shown in Figure 1, both the delay device of claim 2 and the knife assembly of claim 7 are shown as part of and thus usable together in the single combination, specifically the dough divider 10. This is further and more clearly illustrated in Figure 8 which shows both the delay device 250 and the knife assembly 64 useable together in the single combination of the dough divider 10.

In the third paragraph on page 15 of the response, applicant's arguments are not at all understood. It is not at all clear why applicant feels compelled to multiply parts.

For example, the combination ABC could be considered as having a number of subcombinations: A, B, C, AB, AC and BC. Therefore, when considering the single combination, various subcombinations are present and may be considered. As a rough example, if claim 1 was considered to be "A", claim 2 was considered to be "B" and claim 7 was considered to be "C", group I would be AB, and group II would be AC, both of which are clearly subcombinations of the single combination ABC. Thus, it is not at all clear as to why applicant feels that multiple components must be present.

In the paragraph bridging pages 15 and 16 of the response, applicant argues that the Examiner may be considering dependent claims as though they were independent claims. For clarification, the Examiner does not consider each dependent claim as an independent claim per se. However, as applicant noted earlier in the response, each dependent claim shall be construed to include all of the limitations of the claim incorporated by reference and to the dependent claim. It is emphasized that each claim can be considered to be an independent claim, wherein the dependent claims are merely written in shorthand form (i.e., they incorporate the independent claim and intervening claims by reference). To put it another way, there is no difference between the dependent claims as currently presented and those same claims written in independent form incorporating the independent claim and any intervening claims.

It is respectfully submitted that applicant has not provided a persuasive argument as to why the restriction is improper. Applicant has made several arguments that are off point and thus it is not clear as to where the restriction is erroneous as alleged by applicant.

In the first paragraph on page 16 of the response, applicant states that the current restriction was previously made. This is inaccurate as is clear from the record (for one, this restriction has only two groups wherein the previous restriction had more than two groups). The Examiner is sympathetic to the financial burden on applicant. However, the examination of more than one invention in the time allotted for a single invention places a significant burden on the Examiner and on the Patent Office.

The requirement is still deemed proper and is therefore made FINAL.

Combination-Subcombination

3. New claims 63-66 comprise additional Group III.
4. Invention III is related to inventions I and II as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination of Group I as evidenced by Group II; conversely, the combination as claimed does not require the particulars of the subcombination of Group II as evidenced by Group I. Each subcombination has separate utility such as in an apparatus without the other subcombination.
5. Claims 7, 8, 10-13, 23, 24, 27-30 and 63-66 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

***Claim Rejections - 35 USC § 112***

6. Claims 1-6, 9, 14-22, 25, 26 and 31-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 9, the recitation “automatically activates” is vague and indefinite since sufficient structure has not been set forth to perform the recited function (i.e., there is no structure set forth to enable the automatic activation).

In claim 16, line 2, recitation “automatically activates” is vague and indefinite since sufficient structure has not been set forth to perform the recited function (i.e., there is no structure set forth to enable the automatic activation).

In claim 18, line 9, the recitation “automatically activates” is vague and indefinite since sufficient structure has not been set forth to perform the recited function (i.e., there is no structure set forth to enable the automatic activation).

In claim 34, line 2, the recitation “automatically deactivated” is vague and indefinite since sufficient structure has not been set forth to perform the recited function.

In claim 39, line 11, the recitation “automatically activates” is vague and indefinite since sufficient structure has not been set forth to perform the recited function.

In claim 48, line 2, the recitation “automatically deactivates” is vague and indefinite since sufficient structure has not been set forth to perform the recited function.

In claim 50, line 11, the recitation “automatically deactivates” is vague and indefinite since sufficient structure has not been set forth to perform the recited function.

In claim 60, line 3, the recitation "automatically deactivated" is vague and indefinite since sufficient structure has not been set forth to perform the recited function.

In claim 61, line 10, the recitation "automatically deactivates" is vague and indefinite since sufficient structure has not been set forth to perform the recited function.

In claim 62, line 10, the recitation "automatically deactivates" is vague and indefinite since sufficient structure has not been set forth to perform the recited function.

***Claim Rejections - 35 USC § 102/103***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-6, 14-22, 25, 31-34, 36, 37, 39, 41-55 and 57-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Hallahan, pn 889,122.

Hallahan discloses an apparatus with every structural limitation of the claimed invention as best understood from the claims including a hopper (e.g., 1) with a lid (e.g., 2); a latch assembly (e.g., 3); a press plate (e.g., 7).



In the alternative, if it is argued that the latch assembly of Hallahan is not automatically actuatable, the Examiner takes Official notice that such automatically actuatable latches are old and well known in the art and provide various known benefits including providing for automatic operation of the latch assembly for various reasons including safety reasons. Therefore, it would have been obvious to one having ordinary skill in the art to provide an automatically actuatable latch assembly on the apparatus of Hallahan for the well known benefits including those described above.

***Claim Rejections - 35 USC § 103***

10. Claims 26, 38 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hallahan, pn 889,122.

Hallahan discloses, or in the alternative teaches, an apparatus with almost every structural limitation of the claimed invention but lacks a coiled spring as claimed. However, the Examiner takes Official notice that coiled springs as claimed are old and well known in the art and provide various well known benefits including biasing a lid to an open position so that it does not have to be held open and reduces the possibility of the lid being inadvertently closed. Therefore, it would have been obvious to one having ordinary skill in the art to provide a coiled spring on the apparatus of Hallahan for the well known benefits including that described above.

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***Allowable Subject Matter***

11. Claims 2, 35 and 40 appear that they would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (703)308-1404. The examiner can be reached Monday through Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (703)308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Clark F. Dexter**  
**Primary Examiner**  
**Art Unit 3724**

cfd  
May 3, 2004